

**MINUTES
ENFORCEMENT COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS
1917 IH-35 SOUTH, BOARD ROOM, AUSTIN, TX
November 18, 2009 – 10:00 am**

Call to Order. Committee Chair Daniel Wong, Ph.D., P.E., called the Enforcement Committee meeting to order at 10:04 a.m., on November 18, 2009, at the Texas Board of Professional Engineers, (TBPE) 1917 South IH-35, Austin, Texas. (Note: All votes are unanimous unless otherwise indicated.)

1. Roll call and welcome visitors.

Daniel Wong, Ph.D., P.E.	Chair
Elvira Reyna	Member
Edward L. Summers, Ph.D.	Member

A quorum was present. Jeb Boyt, Assistant Attorney General, was present to provide legal counsel. Mr. Edmundo Gonzalez, P.E., and Jose Guerra, P.E., Emeritus Board Members were present.

The following staff members were present:

Lance Kinney, P.E.	Deputy Executive Director
C.W. Clark, P.E.	Director of Compliance & Enforcement
Cliff Bond	Supervising Investigator
Tyler Ferguson	Investigator
Dorothy Nieto	Executive Assistant

Visitors. Jim Winton, Texas Society of Professional Engineers (TSPE); Peyton McKnight, Texas Council of Engineering Companies (TCEC).

2. Public comment. None.

DISCUSS AND POSSIBLY ACT ON THE FOLLOWING ITEMS:

3. Review, discuss, and possibly recommend rule changes to sanctions listed in §139.35, Sanction and Penalties.

The Board asked the Enforcement Committee to revisit the Sanction Tables in the TBPE rules for any potential changes.

a) Consideration and recommendations for establishing the severity of disciplinary action based on the each of the items identified in §139.35 (a) (1)-(6) (i.e., multiplier, percentage, or weighting factors).

The committee was given the list of violations, recommended sanctions, and the worksheet used to calculate and assess sanctions for violations of the Act and Rules. The committee previously discussed whether each factor in the worksheet should be equal. Mr. Clark summarized the sanction process by staff. The sanction recommendation is reviewed by the Deputy Executive Director and Executive Director. The Executive Director makes the final approval of the recommended sanction. The review of the sanction process is to seek guidance from the Board regarding each of the factors and severity. Mr. Clark provided additional detail and examples regarding the economic costs to property and environmental costs. Dr. Wong asked the committee members if the recommended sanction for each violation is appropriate. Mr. Bond added that individual items may have the same recommended sanction but the severity is what the staff is asking guidance from the committee. Dr. Summers added that the initial responsibility of the Board is to protect the health, safety, and welfare of the public. Mr. Bond explained that how the weight is

applied to the violation by using the multiplier is based on the severity of the violation. Dr. Summers asked how the administrative cost is added to the penalty. Mr. Bond responded that the administrative cost can be incorporated. Dr. Summers gave an example of the Accountancy Board's administrative cost applied to a violation in addition to the fine. Mr. Clark noted that the maximum administrative sanction is \$3,000.00 per day, per violation.

The staff was directed by the committee to review the ten weighting factors, rank them, and provide the information at the next scheduled Enforcement Committee meeting. The staff was also asked to consider the public's health, safety, and welfare as a weighting factor when reviewing a violation.

b) Consideration of suggested sanctions for licensee specific violations (§139.35 (b)) and possibly establishing minimums for certain violations.

This item relates to the suggested sanction table in the rules. The discussion included the a common scenario - failure to report a change of address, employment, or criminal conviction. Occasionally a licensee does not report a criminal conviction, and the Board discovers these through the criminal background checks conducted by the Licensing Director at which time the Compliance & Enforcement Department will open a case. Based on the last informal conferences, §137.63(a) will be applied to the failure to report a change of address, employment, or criminal conviction violation. Mr. Bond added that all criminal convictions would be an ethical violation. The committee was informed that an informal reprimand is not published on the Board website or in the newsletter, but a formal reprimand is published. Both the formal and informal reprimands can include an administrative penalty. The committee stated that they want licensees held accountable if they have attempted to deceive the Board and they would like to see higher penalties and formal reprimands applied. Mr. McKnight, TCEC, suggested that a statement informing the licensee/applicant regarding the severity of violating the rule by not providing the appropriate information should be on the application/renewal form.

The committee agreed that a rule change is not required at this time. The staff was directed to make sure the ethical rules are considered when staff is making a violation determination.

Mr. Kinney requested that the committee review and provide guidance to the staff regarding the minimum and maximum recommended sanctions. The committee was informed by Mr. Clark that the minimum administrative sanction is \$100 as stated in the TBPE rules. It was pointed out that the committee's concern is that some of the sanctions given for violations are lower than what is suggested in the table. Mr. Kinney discussed the reasons and factors that go into the sanction process. Mr. Clark shared with the committee that a worksheet now accompanies each signed consent order to inform the Board how the sanction was determined. Mr. Clark stated that some of the rule violations may be negotiated through an informal conference, or at the State Office of Administrative Hearing (SOAH) formal hearing. Once the Executive Director has made the final decision, the sanction and charge is sent to General Counsel for review and validation.

The Committee discussed the process and collection percentage when a high penalty is imposed. If the violation is by a licensee, then the Board may suspend or revoke their license if payment is not received in a timely manner. Sanctions not collected are sent to the Attorney General's Office for collection.

The committee pointed out that the Board would like to see more consistency and boundaries when applying sanctions. Mr. Kinney mentioned that staff could provide a consistency summary as reference materials on an as-needed basis. Staff should take into

consideration the health, safety, and welfare of the public when reviewing these violations. The committee discussed the \$100 minimum administrative sanction stated in the TBPE Law and Rules, the \$3,000 maximum sanction, and the sanction table. The committee will review the consistency summary at each regularly scheduled committee meeting. Staff will continue to include the worksheet for each consent order and investigators will also be present at each meeting to discuss cases as needed. The committee agreed that there are no recommended changes to §139.35 (b). No action was taken on this agenda item.

c) **Consideration of suggested sanctions for unlicensed practice or offering of engineering services or use of engineer title in §139.35 (c) and (d).**

Mr. Clark reported that these sanctions are usually associated with unlicensed practice or using the "engineer" title. There is a sanction listed for the first and subsequent occurrences. The staff is seeking guidance from the committee on whether there are any changes needed to this table. The committee agreed to keep the current table and check for consistency. No action was taken on this agenda item.

d) **Consideration of suggested sanctions for governmental entities for violations of the Act §139.35 (e).**

Mr. Clark reported that the sanctions in this table are associated with violations by governmental entities. The committee agreed to keep the current table and keep checking for consistency. No action was taken on this agenda item.

4. **Issues for consideration and schedule next meeting.**

Staff will provide the committee with suggested rankings and a model for possible changes to the sanction worksheet.

ADJOURN.

It was MOVED/SECONDED (Reyna/Summers) to adjourn the m meeting at 10:54 am. A vote was taken, and the MOTION PASSED.

Date minutes were approved as submitted:

February 25, 2010

Date minutes were accepted by Board:

February 25, 2010